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Contact
Garrett Wallace
561-682-6371
gwallace@sfwmd.gov

U.S. Solicitor General Supports Florida Water Management District in Critical U.S. Supreme Court Case

States and Private Groups Across the Country also Join in Support

WASHINGTON, D.C. – The Solicitor General of the United States has now formally given his support to Florida water managers involved in a case before the U.S. Supreme Court, asserting that lower federal courts wrongly interpreted the federal Clean Water Act. The United States joined the South Florida Water Management District (Water Management District) in arguing that the lower courts' misinterpretation could impede the world's largest ecosystem restoration project, which is now under way in the Everglades.

The "friend of the court" brief filed on September 10 by the U.S. Solicitor General said that "the Court of Appeals' mistaken imposition of NPDES permitting requirements on the S-9 pumping station is unlikely to provide any substantial environmental benefits. Rather, it would likely misdirect governmental resources and potentially hinder the Everglades restoration process."

The Solicitor General's position, which had been requested by the Supreme Court justices, lends strong support to the Water Management District, the Florida agency implementing the Congressionally mandated $8 billion Everglades Restoration program. The position of the Water Management District also has received a groundswell of support throughout the country. The Water Management District's position is now supported by 14 briefs filed with the Supreme Court on behalf of 49 interested groups. These groups represent a significant cross-section of the country and include 11 state governments, numerous water management agencies nationwide and a host of private sector groups. These "friends of the Court" now join the Water Management District in calling on the Supreme Court to reverse the lower federal courts' expansive and erroneous view of a section of the Clean Water Act.

"Congress did not intend," the Solicitor General said, "to impose the NPDES permitting requirements on that water control facility or on the many comparable facilities throughout the Nation that do no more than convey or connect navigable waters."

"Having the support of the Solicitor General – who lends the full weight of the Executive Branch in support of our position – in addition to the significant number of diverse amici groups will help the Justices focus on the serious national consequences that are involved in this case," said Nicolas Gutierrez, chairman of the Water Management District.

"We're already well on the way to cleaning up the Everglades. Yet additional progress would be delayed – or even diverted – if the law is wrongly applied, and if new procedures are added to existing regulations," Gutierrez said. "Unless the lower courts' reading of the law is overturned, there would be serious national consequences for the environment and the economy. Taxpayers everywhere would face vastly higher costs – and public water management agencies nationwide would face drastically more costly and complicated tasks – if the Supreme Court allows this new expansive theory of excessive regulation to stand."

Today, water moves in Broward County, Florida from the C-11 canal through a levee into Water Conservation Area to provide flood protection and to protect the water supply for the residents of South Florida. The Water Management District argues it is not a "polluter" by merely moving existing water within the Everglades, adding absolutely no pollutants to the water. Nationwide supporters of the Water Management District join in arguing that Congress, under the Clean Water Act, intended that an NPDES permit should be required only to regulate those who actually add dangerous pollutants to the nation's waters.

This precedent setting case is being watched throughout the country by states, water managers and other groups who require flexibility in their ability to move water for the benefit of the public. The states already have numerous protections in place to protect water quality. The Everglades restoration is a prime example of the type of ecosystem restoration project which will be dramatically delayed without a reversal by the Supreme Court. The case will be argued before the Supreme Court in January 2004.